IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: **HEALTH DIAGNOSTIC LABORATORY, INC., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No.: 15-32919-KRH** **Jointly Administered**
RICHARD ARROWSMITH AS LIQUIDATING TRUSTEE OF THE HDL LIQUIDATING TRUST, **Plaintiff,** **v.** **AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, INC.** **Defendant.** **SERVE:** **C T CORPORATION** **REG. AGENT** **4701 COX ROAD, SUITE 285** **GLEN ALLEN, VA 23060** **and**	**Adversary Proceeding No. 17-_____**

[1] The debtors in these cases, along with the last four digits of each debtor's federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434)(the "**Debtors**").

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COMPLAINT TO AVOID AND RECOVER AVOIDABLE TRANSFERS AND FOR RELATED RELIEF

Richard Arrowsmith, in his capacity as Liquidating Trustee of the HDL Liquidating Trust (the "**Plaintiff**" or the "**Liquidating Trustee**"), appointed pursuant to the confirmed Modified Second Amended Plan of Liquidation (the "**Plan**") of Health Diagnostic Laboratory, Inc., *et al.* (the "**Debtors**"), by and through his undersigned counsel, for his Complaint to Avoid and Recover Avoidable Transfers and for Related Relief (the "**Complaint**") against AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, INC. ("**ACS**" or the "**Defendant**") respectfully states and alleges as follows:

JURISDICTION AND VENUE

1. On June 7, 2015 (the "**Petition Date**"), each of the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "**Bankruptcy Court**"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), commencing the above-captioned Chapter 11 Cases (the "**Chapter 11 Cases**"). On June 9, 2015, the Bankruptcy Court entered an order authorizing the joint administration of these Chapter 11 Cases [Docket No. 42]. On June 16, 2015, the United States Trustee for the Eastern District of Virginia appointed the statutory committee of unsecured creditors (the "**Creditors' Committee**").

2. On May 12, 2016, this Court entered an order confirming the Plan [Docket No. 1095] (the "**Confirmation Order**"). Pursuant to the Plan and 11 U.S.C. § 1123, the Liquidating

Trustee is the successor, for all purposes, of the Debtors and the Creditors' Committee, and is thereby vested with standing to bring this action as a representative of the HDL Liquidating Trust.

3. This Bankruptcy Court has subject matter jurisdiction over this adversary proceeding (the "**Adversary Proceeding**") pursuant to 28 U.S.C. §§ 157 and 1334(b).

4. The Adversary Proceeding constitutes a core proceeding by virtue of 28 U.S.C. § 157(b)(2)(A), (E), and (O).

5. The predicates for the relief requested herein are sections 105(a), 502, 542, 544, 548, and 550 of the Bankruptcy Code; Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); applicable state law and, as applicable, 28 U.S.C. § 3304.

6. The Liquidating Trustee consents to entry of final orders and judgment by the Bankruptcy Court in this Adversary Proceeding.

7. Venue is proper in this Bankruptcy Court under 28 U.S.C. §§ 1408 and 1409.

8. Venue is proper in this Bankruptcy Court as to the Defendant because a substantial part of the events or omissions giving rise to the claims asserted herein against the Defendant occurred in this judicial district.

PARTIES

9. The Plaintiff is the Liquidating Trustee.

10. Upon information and belief, ACS is a Washington, District of Columbia corporation.

NATURE OF THE ACTION

11. This Adversary Proceeding is to recover the transfers, losses and other damages caused to the Debtors and their creditors, including those creditors which assigned to the Liquidating Trustee and the Trust their Creditor Causes of Action as defined in Section 1.33 of the

Plan ("**Assigning Creditors**"). A list of Assigning Creditors, as of the date of the filing of this Complaint, is attached hereto as **Exhibit 1**.

FACTUAL BACKGROUND

12. Health Diagnostic Laboratory, Inc. ("**HDL**") was formed as a start-up laboratory in Richmond, Virginia, offering a panel of blood tests for early detection of cardiovascular disease, diabetes, and related illnesses.

13. From the outset, HDL's insiders relied on illegal business practices that incentivized health care providers ("**HCPs**"), to use HDL.

14. One such practice was the payment of illegal "processing and handling" ("**P&H**") fees to HCPs, whereby HDL paid HCPs large P&H fees (the "**P&H Program**") to induce HCPs to order HDL's tests instead of those offered by other laboratories.

15. The P&H Program was a scheme that violated the federal Anti-Kickback Statute, 42 U.S.C. § 1320(a)-7(b)(a)(A), the federal False Claims Act, 31 U.S.C. § 3729 *et seq*., and similar state anti-kickback laws that prohibit HDL from offering or paying, and HCPs from soliciting or accepting, such illegal payments.

16. The P&H Program induced the HCPs, to order unnecessary tests and to utilize HDL instead of less costly in-network diagnostic laboratories. Such practice perpetuated the submission of fraudulent and inflated claims to certain creditors, including the U.S. Government and Assigning Creditors for reimbursement.

17. Throughout the years, the improper and illegal practices worked as intended, and HDL appeared to be enormously successful. However, despite this illusion and outward appearances, HDL was never actually solvent or profitable.

18. HDL's financial statements failed to reflect its actual liabilities, which, due to the improper business tactics described herein, were hundreds of millions or even billions of dollars more than the liabilities it actually reported. HDL and its insiders wrongly reported revenues HDL should never have collected because they were obtained fraudulently, through false pretenses, or through improper business practices.

19. HDL faced catastrophic liabilities to the U.S. Government from the illegal and fraudulent conduct as described herein. These liabilities were immediate and soared into the billions of dollars. They resulted not only from the P&H Program, but from other illegal practices, such as the commission scheme conducted under HDL's marketing contract (the "**BlueWave Agreement**") and the practice of collecting certain monies from patients (the "**Patient Responsibility Collection Practice**").

20. As the U.S. Government determined in its investigation of HDL, every single claim HDL submitted for payment by TRICARE or Medicare outside of Virginia was a false claim under the False Claims Act ("**FCA**"). Moreover, the Patient Responsibility Collection Practice created further liability to both the U.S. Government and private insurance companies each and every time it was used.

21. Each false claim submitted for payment by TRICARE or Medicare, as well as each penalty of trebled damages associated with such false claims, immediately created a debt to the U.S. Government under the FCA and an attendant liability for HDL. From the very first false claim submitted to the U.S. Government, HDL's actual liabilities increased day after day. HDL's liabilities, therefore, always exceeded its revenues and assets.

22. On January 27, 2014, the U.S. Government filed a lawsuit against HDL's former CEO LaTonya Mallory ("**Mallory**") and others. This lawsuit is currently pending in the U.S.

District Court for the District of South Carolina (Case No. 14-cv-00230-RMG) (the "**FCA Action**"). In the FCA Action, the U.S. Government's damages expert filed a report detailing more than $160 million in direct damages sustained by the U.S. Government due to false TRICARE and Medicare claims submitted by HDL through its insiders. The misconduct described herein created enormous liabilities not only in the form of direct damages sustained by the U.S. Government, but also to private insurers, such as certain of the Assigning Creditors, which liabilities exceed another $160 million.

23. These extensive false claims immediately exposed HDL to catastrophic penalties and fines. For false claims resulting from the P&H Program, HDL's exposure exceeded $3 billion. For false claims generated by the illegal commission scheme under the BlueWave Agreement, HDL's exposure exceeded $3 billion. HDL also faced civil monetary penalties of over $400 million for false claims stemming from the Patient Responsibility Collection Practice.

24. Actual liabilities faced by HDL for the illegal and fraudulent practices as described herein were measured not in the tens of millions, but in the billions of dollars. Accordingly, HDL was catastrophically insolvent throughout its history and at the time the Avoidable Transfers were made.

25. Once HDL stopped the improper practices as described herein, HDL experienced predictable and precipitous financial collapse. As evidenced by, among other things: (i) the Debtors' bankruptcy petitions (publicly filed with the Bankruptcy Court); (ii) the proofs of claim that have been filed against the Debtors' estates; and (iii) the Debtors' publicly-filed schedules, the Debtors' liabilities exceeded the value of the Debtors' assets well before the Petition Date.

26. During the six year period prior to the Petition Date (the "**Avoidance Period**"), the Debtors transferred property, either by check, cashier check, wire transfer, ACH transfer, direct

deposit, or otherwise, to certain entities, including ACS (each transfer, an "**Avoidable Transfer**" and, collectively, the "**Avoidable Transfers**") as more fully identified on **Exhibit 2** attached hereto.

27. The Avoidable Transfers were made in the form of sponsorships and/or contributions to charities, nonprofit organizations, or other entities, which Avoidable Transfers were made to support or otherwise enhance the visibility and reputation of HDL's insiders within the community. The Avoidable Transfers were intended to present HDL to the public as a legitimate business and to assist and sustain the fraudulent scheme for the benefit of HDL's insiders at the expense of HDL and its creditors.

28. The Liquidating Trustee seeks to avoid all of the transfers of an interest in the Debtors' property made by the Debtors to the Defendant during the Avoidance Period.

COUNT I
Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550

29. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

30. The Avoidable Transfers were transfers of interest in the Debtors' property.

31. The Avoidable Transfers were made with actual intent of the Debtors and HDL insiders to hinder, delay, or defraud the Debtors' existing and/or subsequent creditors, including without limitation the Assigning Creditors.

32. Some of the factors evidencing actual intent of the Debtors and HDL insiders are (i) payments of the Avoidable Transfers at the same time substantial new liabilities and debts were incurred through continuation of other illegal practices and/or schemes of the Debtors; (ii) insolvency of the Debtors at the time of the Avoidable Transfers or as a result thereof; and (iii) the lack of value or consideration in exchange for the Avoidable Transfers to the Debtors.

33. The Avoidable Transfers were made within two (2) years prior to the Petition Date.

34. As a result of the Avoidable Transfers, creditors of the Debtors, including the Assigning Creditors, sustained significant damages.

35. The Defendant was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Avoidable Transfers.

36. By reason of the foregoing, the Avoidable Transfers are avoidable transfers pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550.

COUNT II

Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and 550, Va. Code § 55-80 or Other Applicable State Fraudulent Conveyance or Fraudulent Transfer Law, and, as Applicable, 28 U.S.C. § 3304

37. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

38. The Avoidable Transfers were transfers of interest in the Debtors' property.

39. The Avoidable Transfers were made with actual intent of the Debtors and HDL insiders to hinder, delay, or defraud creditors of the Debtors, including without limitation the Assigning Creditors.

40. The primary purpose of the Avoidable Transfers was to perpetuate the illegal scheme described herein.

41. Some of the factors evidencing actual intent of the Debtors and HDL insiders are (i) payments of the Avoidable Transfers at the same time substantial new liabilities and debts were incurred through continuation of other illegal practices and/or schemes of the Debtors; (ii) insolvency of the Debtors at the time of the Avoidable Transfers or as a result thereof; and (iii) the lack of value or consideration in exchange for the Avoidable Transfers to the Debtors.

42. The Department of Justice ("**DOJ**") filed Proof of Claim No. 1335 in the Cases, in the amount of $94,144,852.52, plus interest, based on HDL's conduct dating back to November 2008.

43. The Defendant knew or should have known of the Debtors' actual intent, as the circumstances surrounding the Avoidable Transfers should have put the Defendant on inquiry as to the bona fides of these transactions.

44. As a result of the Avoidable Transfers, creditors of the Debtors, including the Assigning Creditors, sustained significant damages.

45. The Avoidable Transfers are avoidable transfers pursuant to Virginia Code § 55-80 or other applicable state fraudulent conveyance or fraudulent transfer law and Bankruptcy Code § 544(b).

46. The Avoidable Transfers were made within five (5) years prior to the Petition Date.

47. Any Avoidable Transfers made within six (6) years before the Petition Date should be avoided pursuant to applicable provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3301, *et seq.*, and Bankruptcy Code §§ 544(b) and 550.

48. The Defendant was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Avoidable Transfers.

49. By reason of the foregoing, the Avoidable Transfers are avoidable transfers pursuant to 11 U.S.C. §§ 544(b) and 550.

COUNT III
Avoidance of Fraudulent Transfers Pursuant to § 548(a)(1)(B) and 550

50. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

51. The Avoidable Transfers were transfers of interest in the Debtors' property.

52. The Debtors did not receive reasonably equivalent value in exchange for the Avoidable Transfers.

53. The Avoidable Transfers were made within two (2) years prior to the Petition Date.

54. The Avoidable Transfers were made while the Debtors were insolvent, or became insolvent as a result of the Avoidable Transfers.

55. At the time of the Avoidable Transfers, the Debtors intended to incur, or believed that they would incur, debts beyond the Debtors' ability to pay as such debts matured.

56. At the time of, or as a result of, the Avoidable Transfers, the Debtors were engaged in business or a transaction for which any property remaining with such Debtors was unreasonably small in relation to its business.

57. At all relevant times, the Debtors had actual creditors holding unsecured claims allowable within the meaning of 11 U.S.C. § 502, including vendors, landlords, suppliers, and other creditors.

58. As a result of the Avoidable Transfers, creditors of the Debtors, including the Assigning Creditors, sustained significant damages.

59. The Defendant was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Avoidable Transfers.

60. By reason of the foregoing, the Avoidable Transfers are avoidable transfers pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550.

COUNT IV
Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and 550, Va. Code § 55-81 or Other Applicable State Fraudulent Conveyance or Fraudulent Transfer Law, and, as Applicable, 28 U.S.C. § 3304

61. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

62. The Avoidable Transfers were transfers of interest in the Debtors' property.

63. The Debtors did not receive consideration deemed valuable in law or reasonably equivalent value in exchange for the Avoidable Transfers. The Avoidable Transfers were improper and illegal, and as a consequence of such transfers, the Debtors became burdened with enormous liabilities, including the liability to the U.S. Government.

64. The DOJ filed Proof of Claim No. 1335 in the Cases, in the amount of $94,144,852.52, plus interest, based on HDL's conduct dating back to November 2008.

65. The Avoidable Transfers were made at the time when the Debtors were insolvent, or became insolvent as a result of the Avoidable Transfers.

66. At the time of the Avoidable Transfers, the Debtors intended to incur, or believed that they would incur, debts beyond the Debtors' ability to pay as such debts matured.

67. At the time of, or as a result of, the Avoidable Transfers, the Debtors were engaged in business or a transaction for which any property remaining with such Debtors was unreasonably small in relation to their business.

68. As a result of the Avoidable Transfers, creditors of the Debtors, including the Assigning Creditors, were harmed.

69. The Avoidable Transfers are avoidable transfers pursuant to Virginia Code § 55-81 or other applicable state fraudulent conveyance or fraudulent transfer law and Bankruptcy Code § 544(b).

70. The Avoidable Transfers were made within five (5) years prior to the Petition Date.

71. Any Avoidable Transfers made within six (6) years before the Petition Date should be avoided pursuant to applicable provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3301, *et seq*., and Bankruptcy Code §§ 544(b) and 550.

72. The Defendant was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Avoidable Transfers.

73. By reason of the foregoing, the Avoidable Transfers are avoidable transfers pursuant to 11 U.S.C. §§ 544(b) and 550.

COUNT V
Disallowance of Claims Pursuant to § 502(d) of the Bankruptcy Code

74. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

75. Property is recoverable from the Defendant under Section 550 of the Bankruptcy Code.

76. The Defendant was either the initial transferee of each of the Avoidable Transfers, the entity for whose benefit the Avoidable Transfers were made, or was the immediate or mediate transferee of the initial transferee receiving the Avoidable Transfers.

77. The Defendant has not paid to the Liquidating Trustee the amount of the Avoidable Transfers, or turned over such property to the Liquidating Trustee, for which the Defendant is liable under Section 550 of the Bankruptcy Code.

78. Pursuant to Section 502(d) of the Bankruptcy Code, any and all claims of the Defendant must be disallowed until such time as the Defendant pays to the Liquidating Trustee all amounts sought herein.

COUNT VI
Unjust Enrichment

79. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

80. From or around 2011 until or around 2014, the Debtors and/or the Assigning Creditors conferred a benefit on the Defendant through, as applicable, the Avoidable Transfers and payments for claims the Defendant and one or more of the Debtors' directors and officers, including Mallory, caused to be presented to the Assigning Creditors.

81. The Defendant knew it received a benefit and should have reasonably expected to repay the Debtors and/or Assigning Creditors.

82. The Defendant accepted and retained the benefits without paying for their value.

83. Allowing the Defendant to retain the benefits received would be unjust and result in unjust enrichment.

84. The Debtors and Assigning Creditors have no adequate remedy at law.

85. As a direct and proximate result of the foregoing wrongful acts, the Debtors and the Assigning Creditors sustained significant damages, including but not limited to the amount of the Avoidable Transfers.

86. As a result of the Defendant's unjust enrichment, the Liquidating Trustee is entitled to recover the damages suffered by the Debtors and Assigning Creditors in an amount to be proved at trial.

COUNT VII
Turnover of Property of the Estate Pursuant to § 542(a) of the Bankruptcy Code

87. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

88. Section 542(a) of the Bankruptcy Code provides in pertinent part “an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under 363 of this title, or that the debtor may exempt under 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property . . . .” 11 U.S.C. § 542(a).

89. The Defendant is in possession of funds received from the Debtors and/or the Assigning Creditors, which do not belong to the Defendant, and which are property of the Debtors’ bankruptcy estates pursuant to section 541 of the Bankruptcy Code.

90. Accordingly, pursuant to section 542 of the Bankruptcy Code, the Defendant should not retain such funds and should turn them over to the Liquidating Trustee and/or the Debtors’ bankruptcy estates in an amount to be proved at trial.

COUNT VIII
Conversion

91. The Liquidating Trustee repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

92. The Debtors and/or Assigning Creditors had a right to possession of the monies transferred to the Defendant via the Avoidable Transfers.

93. The Defendant intentionally and substantially interfered with the monies of the Debtors and/or Assigning Creditors by wrongfully exercising dominion and control over the Avoidable Transfers and/or the payments for the unnecessary tests.

94. As a direct and proximate result of the foregoing wrongful acts, the Debtors and Assigning Creditors sustained significant damages, including but not limited to the amount of the Avoidable Transfers and overpayments made for unnecessary tests by Assigning Creditors.

95. Accordingly, the Liquidating Trustee is entitled to recover the damages suffered by the Debtors and Assigning Creditors in an amount to be proved at trial.

96. The Liquidating Trustee hereby reserves his right to supplement and/or amend this Complaint to include additional facts, theories, and/or transfers as such may be discovered during the course of this Adversary Proceeding and preserve all other claims and defenses relating to the Defendant.

WHEREFORE, the Liquidating Trustee respectfully requests that the Bankruptcy Court enter an Order and Judgment as follows:

(a) On Counts I and III, awarding judgment to the Liquidating Trustee, pursuant to Sections 548 and 550 of the Bankruptcy Code, in an amount of the Avoidable Transfers, and directing the Defendant to pay to the Liquidating Trustee an amount that is not less than the full amount of the Avoidable Transfers, pursuant to Section 550(a) of the Bankruptcy Code;

(b) On Counts II and IV, awarding judgment to the Liquidating Trustee, pursuant to Sections 544(b) and 550 of the Bankruptcy Code, Va. Code Sections 55-80 and 55-81, or pursuant to other applicable state fraudulent conveyance or fraudulent transfer law, and as applicable, 28 U.S.C. § 3304, in an amount to be proved at trial, and directing the Defendant to pay to the Liquidating Trustee an amount that is not less than the full amount of the Avoidable Transfers, pursuant to Section 550(a) of the Bankruptcy Code; and

(c) On Count V, disallowing any claim of the Defendant pursuant to section 502(d) of the Bankruptcy Code.

(d) On Counts VI and VII, awarding judgment to the Liquidating Trustee pursuant to section 542 and applicable state law for turnover of money or the value thereof, which does not belong to the Defendant, in an amount to be proved at trial;

(e) On Count VIII, awarding judgment to the Liquidating Trustee for damages caused to the Debtors and their creditors, including Assigning Creditors, as a result of the Defendant's acts of conversion in an amount to be proved at trial;

(f) awarding pre-judgment interest at the maximum legal rate running from the date of the Debtors' and/or the Liquidating Trustee's first demand to return all Avoidable Transfers to the date of judgment with respect to this Complaint herein;

(g) awarding the Liquidating Trustee his costs and expenses incurred in connection with this Adversary Proceeding, including reasonable attorneys' fees;

(h) entering judgment in favor of the Liquidating Trustee and against the Defendant in an amount not less than $26,575.00, with interest accruing from the date of this Complaint at the judgment rate of interest (the "**Judgment**");

(i) awarding post-judgment interest at the maximum legal rate running from the date of the Judgment until the date the Judgment is paid in full, plus costs;

(j) directing the Defendant to pay forthwith all amounts awarded; and

(k) granting the Liquidating Trustee such other and further relief as the Bankruptcy Court deems just and proper.

Dated: March 31, 2017 Respectfully submitted,

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